In The

Supreme Court of the United States

October Term, 1975

No. 75-1402

UNITED STATES OF AMERICA,

Petitioner,

vs.

STEVE KARATHANOS and JOHN KARATHANOS,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

STANLEY H. WALLENSTEIN
SCHIANO & WALLENSTEIN
Attorneys for Respondents
80 Wall Street
New York, New York 10005
(212) 747-0090

(9007)
LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing
South River, N.J. (201) 257-6850
New York, N.Y. (212) 563-2121
Philadelphia, Pa. (215) 563-5587
Washington, D.C. (201) 783-7288

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases Cited:

Contents

Contents

Contents

Page

APPENDIX

In The

Supreme Court of the United States

October Term, 1975

No. 75-1402

UNITED STATES OF AMERICA,

Petitioner,

vs.

STEVE KARATHANOS and JOHN KARATHANOS,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit (Pet. App. A), entered February 2, 1976, is not yet reported. The opinion of the District Court (Pet. App. C), entered August 1, 1975, is reported at 399 F. Supp. 185.

QUESTIONS PRESENTED

1. Whether this is a proper case in which to consider whether "good faith" of the law enforcement agents should be a relevant factor in determining the reach of the Fourth Amendment exclusionary rule, inasmuch as the Government did not raise that issue and, in fact, resisted inquiry into its good faith at the District Court level.

2. Whether the exclusionary rule should be abandoned in search and seizure cases where the law enforcement agents, instead of conducting a warrantless search, obtain and search under a warrant not supported by probable cause.

STATEMENT

The respondents concur with and adopt the statement in the petition for writ of certiorari, with the following additions:

In the District Court the respondents moved to suppress, with the primary ground being that Agent Jacobs' affidavit was insufficient on its face to show probable cause. Additional grounds, felt also to warrant suppression independently, were put forth for consideration in the event the affidavit was found to be facially sufficient.[1] One such ground was that certain material representations in Agent Jacobs' affidavit, specifically as to the number of aliens previously arrested on the premises and as to the amount of time the informant Athanasiou had

1. The grounds were briefed and put forth for the most part in the affidavits of Steve and John Karathanos, which accompanied the motion to suppress and which are reproduced as Respondents' Appendix A and B, *infra*.

worked and lived on the premises, were false (Resp. App. A and B, pp. 2a, 3a, 6a, 7a, *infra*).[2] A second ground was that the agents, once having obtained the warrant, engaged in an overly broad search of the restaurant by breaking into Steve Karathanos' office and searching through file cabinets and desk drawers (Resp. App. A, p. 3a, *infra*).[3] Another ground was that the agents treated the warrant as a virtual writ of assistance by simultaneously conducting warrantless searches of the home of respondent John Karathanos and the home of another nearby resident.[4] Also the respondents argued that the agents misled the magistrate in procuring the warrant by asserting in the supporting affidavit that they were seeking to arrest aliens for violation of 8 U.S.C. §1325, and by not revealing that the real purpose of the warrant was to obtain evidence to prosecute these respondents under 8 U.S.C. §1324.[5]

2. It was alleged that only one alien rather than eleven had been arrested on the premises, and that Athanasiou had worked and lived on the premises for only a fraction of the time alleged by Agent Jacobs. The Government now concedes at least that Agent Jacobs' affidavit was "evidently inaccurate" on this latter point (Pet., p. 12, n.8).

3. The search warrant (Pet. App. F, pp. 47a, 48a) only authorized the agents to search for and seize illegal aliens, and such are not normally hidden in file cabinets and desk drawers.

4. These warrantless searches were made only moments before the raid on the restaurant, which took place at about 6:00 a.m. on a Sunday morning (Resp. App. A and B, pp. 3a, 5a, 6a, *infra*).

5. 8 U.S.C. §1325, which makes it a crime for an alien to enter the United States illegally (Pet. App. D, p. 46a), was the only statute the magistrate was told was violated. The "harboring" statute, 8 U.S.C. §1324 (Pet. App. D, p. 45a), was never cited to the magistrate, perhaps for good reason. Had it been cited to the magistrate, and had he read it, he may well have made a different assessment of probable cause for he would have known that the employment of illegal aliens and the "usual and normal practices incident to employment," is not a crime.

These alternate grounds for suppression were supported by an offer of proof, and the respondents requested an evidentiary hearing to determine whether, and to what extent, the agents had imposed on the magistrate. The Government, feeling these grounds to be irrelevant, opposed an evidentiary hearing, offered nothing in answer to the respondents' assertions, and argued only the issue of probable cause.

The District Judge granted the motion to suppress, holding that the information in the affidavit was "not enough to provide a reasonable and prudent man with a substantial basis to believe that aliens who had entered the United States in violation of 8 U.S.C. §1325 were probably to be found on the premises, or for that matter that 'illegal' aliens of any kind were to be found there" (Pet. App. C, pp. 38a, 39a). Having found the affidavit facially insufficient to show probable cause, there was no need to grant the respondents' request for an evidentiary hearing concerning the alternate grounds, and the Government, of course, never asked for an evidentiary hearing on any matter. In his decision the District Judge did not address the issue of the agents' "good faith" and its effect, if any, on the exclusionary rule, because the Government never raised that issue before him.[6]

In its appeal to the United States Court of Appeals for the Second Circuit, the Government argued the issue of probable cause and set forth for the first time its contention that the good

6. The Government is wrong when it represents that it put forth a good faith argument to the District Judge which he failed to address (Pet., p. 5, n.1). We have reproduced the pages of the Supplemental Transcript cited by the Government (Resp. App. C, pp. 8a, 9a, *infra*), and it is evident no such issue was argued.

faith of the agents, apparently evidenced by the fact that they acted under color of a warrant, should permit it to avoid the sanction of the exclusionary rule. The majority affirmed the District Court on the probable cause issue, noting that to hold otherwise "would be to permit a warrant to issue on the degree of speculation proscribed by the *Aguilar-Spinelli* test"[7] (Pet. App. A, p. 9a). In rejecting the Government's "good faith" argument, the majority observed that this Court's "landmark discussions of the [exclusionary] rule clearly regard it as a remedy to be applied whenever the search in question does not comply with Fourth Amendment standards, regardless of the presence or absence of a warrant and the good or bad faith of the police officers" (*id.* at 14a, 15a). Moreover, the majority reasoned that continued application of the exclusionary rule in cases such as this should serve a deterrent function by inducing magistrates "to give search warrant applications the scrutiny which a proper regard for the Fourth Amendment requires" (*id.* at 16a), and should serve to deter law enforcement agents from "submit[ting] their warrant applications to the least demanding magistrates" (*id.* at 17a).

The Government now abandons the probable cause issue and argues, that assuming the warrant to be constitutionally invalid, the exclusionary rule should not be applied as it serves no deterrent function because its agents acted in good faith.

REASONS FOR DENYING THE WRIT

We acknowledge the existence of considerable and lively debate among scholars concerning the exclusionary rule and its

7. *Aguilar v. Texas*, 378 U.S. 108 (1964); *Spinelli v. United States*, 393 U.S. 410 (1968).

effectiveness as a means of deterring unconstitutional police action. We recognize too that this Court has only recently heard argument in two cases[8] which raise a "good faith" issue not unlike the issue the Government seeks to frame here. As both cases come from State jurisdictions, it is not surprising to see the Federal Government in search of a vehicle to ride in on the debate. It may, in fact, be good to have the Federal Government in on the argument if this Court is seriously considering repudiating over sixty years' worth of constitutional doctrine. But whether this vehicle can take that trip is another question. We think not for several reasons, one of which is the Government's own approach to this case at the most critical stage of the litigation, when before the District Judge. That approach, put quite simply, is that it refused to discuss the faith of its agents, good or bad, because in its view any such issue was irrelevant. And that approach, we think, precludes the Government from framing the issue it seeks to frame here in anything but a hypothetical sense.

1. Had this been a case involving nothing more than the issue of probable cause, with the agents' behavior being otherwise innocuous, then arguably it could be postured for the Government's good faith-exclusionary rule issue. But this is not the case. As we have indicated in the Statement, *supra,* there were matters raised before the District Judge quite apart from the facial sufficiency of the supporting affidavit. These matters included possible false statements in the supporting affidavit, abuse of the warrant by the overly broad search and by the simultaneous warrantless searches, and an apparent deception upon the magistrate as to what crime the

8. *Wolff v. Rice*, 74-1222 and *Stone v. Powell*, 74-1055, 44 U.S.L.W. 3485 (March 2, 1976).

agents were seeking evidence of. These matters may or may not have been sufficient to warrant suppression independently of the probable cause issue,[9] but that is not important now. What is important now, in light of the issue the Government seeks to frame, is that those matters raised below went straight to the issue of the "good faith" of its agents. And what is even more important is that the Government never answered those matters by affidavit or otherwise, never sought but in fact opposed an evidentiary hearing, and never set forth its good faith argument to the District Judge.

The Government then, when in the proper forum to establish good faith and with the opportunity to do it if it could, assiduously avoided the issue, even to the point of declining to answer allegations of bad faith. Of course, one reason for such reticence may have been that the law then, as it does now, makes good faith irrelevant where probable cause is absent.[10] But that is the very law which the Government says should be changed. Moreover, even under the Government's formulation, suppression is still justified where "the warrant had been procured in bad faith or on the basis of material misrepresentations" (Pet., pp. 11, 12). But bad faith and material misrepresentations are exactly what the respondents alleged. Since the Government admits those matters are relevant, what

9. See *United States v. Dunnings*, 425 F.2d 836, 839 (2d Cir. 1969), *cert. denied*, 397 U.S. 1002 (1970), and *United States v. Belcufine*, 508 F.2d 58 (1st Cir. 1974), concerning false material statements in a supporting affidavit. See *Stanford v. Texas* 379 U.S. 476 (1965) and *Marron v. United States*, 275 U.S. 192 (1927) re the prohibition against general searches.

10. Except in the unusual settings of *Michigan v. Tucker*, 417 U.S. 433 (1974) and *United States v. Peltier*, 422 U.S. 531 (1975).

excuse can it give for not answering those allegations in the District Court?

Whatever the reason for its silence below, it puts the Government now in an awkward position. It seeks to frame what some may call an intriguing issue, but its case just doesn't permit it. It tells this Court now that bad faith and material misrepresentations are relevant, but it refused to face those issues when they were raised in the District Court. Its theory depends on "good faith," but it has already defaulted on that. Thus, the issue it tries to frame is purely hypothetical. Stripping away the rhetoric, the Government is simply telling this Court "we forgot to do something in the District Court, let us go back and do it." But when a defendant forgets to make his motion to suppress, at the proper time and place, he gets no second chance.[11] We suggest that the Government, when answering a motion to suppress, should be held to the same standard.

One good reason for holding the Government to that standard is the strong likelihood that the Government's failure to present its case at the proper time could result in prejudice to these respondents. Should this Court accept the Government's theory, the next step would be to remand to the District Court for a good faith evidentiary hearing. But at that hearing, witnesses would be testifying to events and states of mind[12] at

11. The motion to suppress must be made before trial. A defendant's failure to move timely constitutes a waiver of his objection unless he can show good cause for his failure. See Rule 12(b)(3) and (f), Federal Rules of Criminal Procedure; Wright, *Federal Practice and Procedure:* Criminal §191.

12. It would seem that under the Government's approach the subjective state of mind of the agent or agents would be a critical factor.

least a year old. Also, there is a good likelihood that witnesses necessary to establish the respondents' case will be unavailable.[13] Moreover, by that time the Government will have had the advantage of having over a year in which to formulate its answers to the respondents' allegations.

There is then, we suggest, a clear likelihood that the respondents would be at a disadvantage at a remanded hearing, particularly if they are to bear the burden of proof.[14] And the blame for this can only be placed with the Government. Any such prejudice the respondents may face could have been avoided, had the Government, consistent with the good faith theory it urges now, sought the hearing at the proper time.

2. The exclusionary rule was fashioned, and exists now, for the purpose generally of safeguarding the rights guaranteed by the Fourth Amendment. *United States v. Calandra,* 414 U.S. 338, 348 (1974). It may well be a "blunt instrument" as the Government puts it (Pet., p. 13), but it is the only instrument we know of that is capable of safeguarding those rights. The drastic modification of the rule urged by the Government would leave

13. The informant Athanasiou would be a critical witness at such a hearing and there is good reason to doubt his availability now. The Government held Athanasiou in custody as a material witness under $5,000 bail even after he surrendered himself. Thus, even the Government doubted his availability for its case in chief. After the motion to suppress was granted, he moved to have his deposition taken and for release from custody under 18 U.S.C. §3149. His deposition was taken, and he was released in August of 1975. But he was not deposed on those matters which would be relevant to the suppression issue because the Government's good faith argument hadn't yet been raised.

14. Since the Government seems to say that good faith is evidenced simply because the agents went to the magistrate instead of searching on their own initiative, it would appear that the respondents would bear the burden of proving bad faith or material misrepresentations.

those rights unprotected. This would necessarily be the case because there is now no existing alternate remedy for the vindication of Fourth Amendment rights, and the Government, in its petition, has not suggested a realistic alternative.[15]

The single alternative remedy suggested by the Government is that the magistrate can be fired. But this is no realistic alternative. As the Circuit Court noted, there are other officials not subject to the Federal District Court's supervision who are authorized to issue warrants, and their removal is not easily accomplished (Pet. App. A, p. 12a). Moreover, as a practical matter, it is difficult to see how "rubber stamp" magistrates could ever be identified. Under the Government's theory, probable cause would be irrelevant unless a defendant can show bad faith or material misrepresentations. Defendants who cannot meet that hurdle may well be deterred from even bringing motions to suppress. Also, it would seem that on a motion to suppress, the District Judge's first inquiry would go to the issue of the agents' faith. In those cases where bad faith is not shown, there would be no need to consider probable cause. Thus, the magistrates' determination of probable cause would be shielded from judicial review except under very limited circumstances.

Since judicial review of magistrates' probable cause determinations must inevitably be curtailed under the

15. Even critics of the exclusionary rule would not abolish it until a meaningful alternative is in place, see Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. of Chi. L. Rev. 665, 673-674 (1970); Spiotto, *Search and Seizure: An Empirical Study of the Exclusionary Rule and its Alternatives*, 2 J. of Leg. Studies 243, 269-273 (1973); Amsterdam, *Perspectives on the Fourth Amendment*, 58 Minn. L. Rev. 349, 429-431 (1974); *Bivens v. Six Unknown Named Fed. Narcotics Agents*, 403 U.S. 388, 416 (1971) (dissenting opinion of Chief Justice Burger).

Government's proposal, the threat of being fired as a "rubber stamp" would not hang heavy. But even if there is more judicial review than we think, the proposed remedy still leaves some questions. Thus, how many mistakes would a magistrate be permitted before he could be called a "rubber stamp," and how flagrant, if at all, must his mistakes be? Also, what other considerations would be taken into account in the serious matter of removal? These are questions not susceptible to easy answer, and the Government offers no guidelines. Viewed in this light, the suggested alternative is really no remedy at all.

The Government says that acceptance of its position will prove a benefit by increasing the incentive for agents to go to a magistrate rather than search on their own initiative. Certainly going to a magistrate is the preferred procedure, and a rule which tends to deter warrantless searches is good. But in this context the cost for the added incentive is too high. The Fourth Amendment tells us that probable cause must exist before a warrant can issue, yet the Government's position would permit the issuance of a warrant irrespective of probable cause. This may well increase the incentive to go to a magistrate, but it surely provides no incentive to ensure that probable cause be present.

While the cost for this added incentive to seek a warrant is high, the need for it, we suggest, is not so high. Rules of substance tending to induce agents to opt for the magistrate are already on the books. Thus, the agents know that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment -- subject only to a few specifically established

and well delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967); *Coolidge v. New Hampshire*, 403 U.S. 443, 454-455 (1971). Also, the agents know that their warrant applications are viewed not in a grudging or negative manner, *United States v. Ventresca*, 380 U.S. 102, 108 (1965), and that to obtain a valid warrant, they need only to show the probability of criminal activity and not a *prima facie* case. *Beck v. Ohio*, 379 U.S. 89, 96 (1964). And the agents know, too, that a reviewing court will show great deference to a determination of probable cause made by a magistrate, *Jones v. United States*, 362 U.S. 257, 270-271 (1960), and that any doubt will be resolved in favor of the warrant's validity. *United States v. Ventresca, supra*, 380 U.S. at 106.

These rules, along with others mentioned in the dissent below,[16] should provide agents with sufficient incentive to go to the magistrate. Whatever benefit could be derived along this line by accepting the Government's position would be minimal. Any such benefit, when balanced against the attendant dilution of the probable cause concept, is, we suggest, hardly worth the price.

The Government's argument draws heavily on selected passages from three recent decisions in which this Court declined to extend the exclusionary rule in different contexts. *United States v. Calandra*, 414 U.S. 338 (1974); *Michigan v. Tucker*, 417 U.S. 433 (1974); *United States v. Peltier*, 422 U.S. 531 (1975). In *Calandra* this Court declined to extend the rule to grand jury proceedings, reasoning that the rule's deterrent effect would be minimal when balanced against the harm to the grand jury system. It would be minimal because the evidence seized

16. Pet. App. A, pp. 22a-24a.

under the defective warrant would, in any event, be inadmissible in a subsequent criminal trial of the search victim. This, it was felt, would negate any incentive to disregard the requirements of the Fourth Amendment. Thus, the holding in *Calandra*, premised as it was on application of the exclusionary rule at trial, lends little support to the Government's position.

The same is true for the holdings in *Michigan v. Tucker*, *supra*, and *United States v. Peltier*, *supra*. In *Tucker* this Court declined to extend the rule in a Fifth Amendment context and in *Peltier*, declined to extend it in a retroactivity context. The reasoning in both cases was that the rule's deterrent purpose would not be served because the Government agents had acted in good faith. However, in each case the good faith of the agents was evidenced by the fact that the agents had fully complied with the constitutional standards prevailing at the time of the arrest. By contrast, the good faith rule proposed here by the Government, assumes violation of those standards.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

s/ Stanley H. Wallenstein

SCHIANO & WALLENSTEIN
Attorneys for Respondents

APPENDIX A — AFFIDAVIT OF STEVE KARATHANOS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

STEVE KARATHANOS and JOHN KARATHANOS,

Defendants.

75 Cr. 456

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

STEVE KARATHANOS, being duly sworn, deposes and says:

1. I am the President and sole stockholder of Steve's Pier I Restaurant, and I am a defendant in this case. I make this affidavit in support of a motion to suppress the evidence obtained as a result of the search of my Restaurant conducted on May 18, 1975.

2. I have read paragraph numbered one of the Affidavit For A Search Warrant signed by Criminal Investigator Neal Jacobs on May 16, 1975. To the best of my knowledge and

recollection, only one of the eleven individuals named in that paragraph was apprehended on the premises of my Restaurant. That person was Michael Katsigiorgis, who from my records worked in the Restaurant as a chef from October 1970 to November 1, 1970. Although Katsigiorgis was picked up by Immigration on my premises, I know that he was never deported and is now a lawful permanent resident of the United States.

3. Of the other individuals named in paragraph numbered one of the Affidavit, my records indicate that Nikolos Tissanos, who worked under the name Pissanos, was employed from November 1970 through December 25, 1970. Victor Llanos, my records indicate, worked in my Restaurant under the name Alexandro Llanos from August 1970 to October 1970. He, I believe, is the same person as Victor Alexandro Llanos-Atunes named in the government Affidavit. Koastantinos Voulgaridis, I recall, worked in the Restaurant only one night and was picked up by the local police that night for having a fight with my brother Steve. I never saw him after he was picked up by the local police. To the best of my knowledge, neither Pissanos, Llanos nor Voulgaridis were picked up by Immigration on the Restaurant premises. As concerns the other individuals named in the government Affidavit, I have no recollection or record of them working in my Restaurant and no recollection of them being apprehended by Immigration on the Restaurant premises.

4. I have also read paragraph numbered two of the Affidavit For A Search Warrant. That paragraph states that Athanasios Athanasiou had been employed in my Restaurant from October of 1973 till Sunday, May 11, 1975 and that during

the last year and a half, he has resided in the basement of my Restaurant. Those statements are incorrect. The truth is that Athanasios Athanasiou did not work in my Restaurant until some time about the beginning of 1975. When he started to work in my Restaurant, he did not reside in the basement, but he lived in a rooming house with his wife. His wife left him some time ago, and he then asked me for permission to sleep in the Restaurant so that he could save money. I permitted him to sleep in the Restaurant about one or two weeks before he was fired. I fired him on May 11, 1975 because he was involved in an incident concerning sexual abuse of a child.

5. I inspected the premises of my Restaurant shortly after the search was conducted and while the Immigration investigators were still present. I saw that there was considerable damage done to one of the entrances where part of a door and a lock had been damaged. Also, I saw that the investigators had broken into my office, had gone through desk drawers and file cabinets and had left the cabinets open, taken out documents and left the documents strewn about. I can also state on information and belief that some of the same investigators who conducted the search of my Restaurant on the same morning also searched the home of one Vinnie Geraghty whose house is located about half a mile from my Restaurant, looking for illegal aliens. I am also told that the same investigators, on the same morning, searched the home of my brother, John Karathanos, whose house is located across the street from my Restaurant, also looking for illegal aliens.

Appendix A

STEVE KARATHANOS

Sworn to and subscribed before me

this 1 day of (illegible) 1975).

APPENDIX B — AFFIDAVIT OF JOHN KARATHANOS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

STEVE KARATHANOS and JOHN KARATHANOS,

Defendants.

75 Cr. 456

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN KARATHANOS, being duly sworn, deposes and says:

1. I am the brother of Steve Karathanos and am employed as a chef in Steve's Pier I Restaurant. I am a defendant in this case. I make this Affidavit in support of a motion to suppress the evidence obtained as a result of the search and seizure conducted in the Restaurant on May 18, 1975.

2. I recall quite vividly the morning of May 18, 1975. At about ten minutes before six that morning, as I was getting dressed, I heard a knock on my door. I opened the door and

Appendix B

there were seven men who turned out to be Immigration investigators. Four of them brushed past me, saying that they had complaints that there were illegal aliens in my home. Three of them remained stationed outside my home. They searched my entire house, found nothing and then left. At about the same time, I saw that they were also conducting a raid on the Restaurant, which is located across the street from my house. I have also been told by Vinnie Geraghty, who lives about two blocks from the Restaurant that some time earlier on that morning, at about 5:30 a.m., Immigration investigators searched his house for illegal aliens and found no one.

3. I have read paragraph numbered one of the Affidavit For A Search Warrant, signed by Criminal Investigator Neal Jacobs on May 16, 1975. To my knowledge and recollection, only one of the eleven individuals named in that paragraph was apprehended on the premises of the Restaurant. The person apprehended was Michael Katsigiorgis. He worked as a chef in the Restaurant and to my knowledge he was never deported and is now a permanent resident of the United States.

4. Of the other individuals named in paragraph numbered one of the Affidavit, the records of the Restaurant show that Nikolos Tissanos, whose last name is, I believe, Pissanos, worked in the Restaurant from November 1970 through December 25, 1970. Victor Llanos, whom I believe is the same person as Victor Alexandro Llanos-Atunea, worked in the Restaurant under the name Alexandro Llanos from August 1970 to October 1970. Koastantinos Voulgaridis worked in the Restaurant only one night for five hours. I specifically recall him

Appendix B

because he challenged me to a fight and we did fight that evening off the Restaurant premises. Voulgaridis was locked up by the local police that evening and I never saw him again. To the best of my knowledge, neither Pissanos, Llanos nor Voulgaridis were picked up by Immigration on the Restaurant premises. I do not know whether any of the other individuals named in paragraph numbered one of the Jacobs Affidavit worked in the Restaurant, and I have no recollection of any such people having been apprehended by Immigration on the Restaurant premises.

5. I have also read paragraph numbered two of the Affidavit For A Search Warrant. In that paragraph it is stated that Athanasios Athanasiou worked in the Restaurant from October of 1973 till May 11, 1975 and that during the last year and a half he lived in the basement of the Restaurant. I know that statement is incorrect. I know that Athanasios Athanasiou did not start to work in the Restaurant until the beginning of 1975. At that time he lived in a rooming house with his wife. She left him some time ago. At about the time his wife left he began sleeping in the Restaurant. This was about one or two weeks before he was fired. My brother Steve Karathanos fired him on May 11, 1975 because he had attempted to sexually abuse a child.

JOHN KARATHANOS

Sworn to and subscribed before me

this day of , 1975.

APPENDIX C — EXCERPTS OF TRANSCRIPT OF PROCEEDINGS

[Supplemental Transcript, pp. 35, 36]

* * *

defendants' Fourth Amendment rights.

THE COURT: Mr. Wallenstein, I hope you are not going to re-argue?

MR. WALLENSTEIN: No, your Honor, I have nothing further to argue.

MR. CORCORAN: We don't use warrants to authorize the arrest of illegal aliens. In a case such as this we have probable cause to enter the premises. 1357 does not come into this as Mr. Wallenstein suggests. The authority is interrelated to the illegal aliens in paragraph (a)(2). If the Government has reason to believe that the alien is here by violation of the law it is clear in the statute that the procedure is that he does not have to have a warrant to authorize his going into the premises. The Government has authority given to them beyond that.

If the Government has reason to believe they are on certain premises they can at least search them out without a warrant, if they did go out without a warrant.

We feel that the Government has done nothing wrong by taking pictures of or gathering other evidence of harboring while they were there.

Appendix C

One case relied upon by the defendants for this charge that the Government was wrong in what they did [36] here, is the case of Caglavorsi (phonetic) 291 Fed. 262. There is authority in that case that is quite a distinguishable fact. Those facts involve not only a warrant but also the basis for a frisk of a man.

That is the authority that was used when we went into that restaurant.

The defense attorneys are claiming that the Government went through files of the defendants at Steve's Pier restaurant when they were there. That the officers looked in files.

If the defense attorneys had started out their argument by saying that the Government had property that should be properly suppressed and was found without a legal warrant and that it was suppressible because it went beyond the scope of the warrant because there was no authorized search for any such material.

THE COURT: Thank you, gentlemen.

Decision reserved until my memorandum of law is completed.

MR. CORCORAN: The Government would like to see these people released. We have these witnesses at West Street. We would like to go to trial next week. These witnesses have been in jail for some six or seven weeks now. And I feel it is grossly unfair to them. It is grossly unpardonable.

* * *